

NEAR-TERM ASBESTOS ACTIONS

ASBESTOS SIGNIFICANT NEW USE RULE

ADMINISTRATOR'S ROLE:

- As early as next week EPA will sign a final Significant New Use Rule (SNUR), Administrator signature is not required for this action.

NEXT STEPS:

- This SNUR will close an asbestos loophole by ensuring that manufacture, import, or processing for certain currently unregulated new uses identified in the SNUR are prohibited unless reviewed and approved by EPA.
- OCSPP intends to finalize the rule in April 2019 with OPPT Office Director signature.

BACKGROUND:

- This action represents the first agency regulatory action on Asbestos under TSCA since EPA's 1989 final rule banning asbestos.
- Notably, EPA received a significant number of comments on the proposed SNUR requesting EPA to broaden the scope of the rule. EPA agrees with these comments and is therefore expanding the final rule to include any use of asbestos that is no longer ongoing and not currently banned.
- EPA expects industry groups to be supportive of the regulation, the general public, tribal, state, and local government, as well as NGOs are also expected to be generally supportive. Misconceptions that a SNUR "allows" banned uses vs. requiring review before an otherwise allowable use may begin or restart resulted in negative reception of the proposal.
- In addition, the SNUR will help confirm the conditions of use for the asbestos risk evaluation underway and scheduled to be finalized in December 2019, by bounding the universe of ongoing uses.

SECOND SECTION 21 ASBESTOS PETITION

ADMINISTRATOR'S ROLE:

- EPA is planning to deny a recent petition under section 21 of TSCA from 14 state Attorney Generals (AGs) regarding creating certain reporting requirements for asbestos. Administrator signature is not required for this action.

OCSPP RECOMMENDATION:

- EPA recommends denying the AG petition which must occur in late April of this year.
 - EPA already has enough information to undertake the risk evaluation and take risk management action for asbestos. Furthermore, it is unclear if information received would be novel and timely.
 - While not a factor in consideration of the merits of the AG petition, it is notable that if EPA denies the AG petition, as petitioners are requesting a new rule rather than amendment to an existing rule, a legal challenge could result in de novo review of the denial, which could include discovery related to any Agency work on asbestos.

NEXT STEPS:

- EPA must inform petitioners in writing within 90 days (by April 30, 2019) if denying this section 21 petition.

BACKGROUND:

- EPA denied a previous first petition (from the Asbestos Disease Awareness Organization (ADAO) and others) in late 2018, and are currently in litigation regarding this denial. EPA denied the ADAO petition because the requested changes to CDR reporting would not have resulted in information being received in time to inform our risk evaluation.
- The 2018 ADAO petition requested that EPA initiate rulemaking under section 8(a) of TSCA to add asbestos to Chemical Data Reporting (CDR) requirements through an amendment to the CDR rule to inform EPA's risk evaluation of asbestos.
- The 2019 AG petition requests that EPA initiate rulemaking under section 8(a) to issue a new asbestos reporting rule to address infirmities in asbestos reporting under CDR to inform EPA's risk management of asbestos. The information received from the AG petition *could* inform EPA's asbestos risk management.
- If EPA denies the AG petition, it is reasonable to anticipate that the petitioners may commence a civil action in a US District Court to compel EPA to initiate a rulemaking proceeding as requested. Petitioners have 60 days after denial to file.

Ex. 5 Deliberative Process (DP)